



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2015-0512; FRL-9932-81-Region 7]**

**Approval and Promulgation of Implementation Plans; State of  
Kansas; Infrastructure SIP Requirements for the 2008 Ozone  
National Ambient Air Quality Standard**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to approve an element of a State Implementation Plan (SIP) submission from the State of Kansas addressing the applicable requirements of Clean Air Act (CAA) section 110 for the 2008 National Ambient Air Quality Standards (NAAQS) for Ozone (O<sub>3</sub>), which requires that each state adopt and submit a SIP to support implementation, maintenance, and enforcement of each new or revised NAAQS promulgated by EPA. These SIPs are commonly referred to as "infrastructure" SIPs. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management

program are adequate to meet the state's responsibilities under the CAA.

**DATES:** This direct final rule will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, without further notice, unless EPA receives adverse comment by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2015-0512, by one of the following methods:

1. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
2. Email: [kemp.lachala@epa.gov](mailto:kemp.lachala@epa.gov).
3. Mail or Hand Delivery: Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

*Instructions:* Direct your comments to Docket ID No. EPA-R07-OAR-2015-0512 EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through [www.regulations.gov](http://www.regulations.gov) or email information that you consider to be CBI or otherwise protected.

The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Environmental

Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding legal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Lachala Kemp, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551-7214 or by email at [kemp.lachala@epa.gov](mailto:kemp.lachala@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we refer to EPA. This section provides additional information by addressing the following questions:

- I. Background
- II. Summary of SIP Revision
- III. Final Action
- IV. Statutory and Executive Order Review

## **I. Background**

On July 16, 2014, (79 FR 41486), EPA published a notice of proposed rulemaking (NPR) for the State of Kansas. The NPR proposed approval of Kansas' submission that provides the basic elements specified in section 110(a)(2) of the CAA, or portions thereof, necessary to implement, maintain, and enforce the 2008 O<sub>3</sub> NAAQS. EPA subsequently published the final rulemaking on

October 21, 2014, (79 FR 62861). EPA did not act on the visibility protection portion of section 110(a)(2)(J) of the CAA at that time.

## **II. Summary of SIP Revision**

On March 19, 2013, and May 9, 2013, EPA received SIP submissions from the state of Kansas that address the infrastructure elements specified in section 110(a)(2) of the CAA for the 2008 O<sub>3</sub> NAAQS. The submissions addressed the following infrastructure elements of section 110(a)(2): (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). Specific requirements of section 110(a)(2) of the CAA and the rationale for EPA's proposed action to approve the SIP submission are explained in the NPR and will not be restated here.

Under section 110(a)(2)(J) of the CAA, states are required to submit SIPs that meet, among other provisions, part C of the CAA, relating to prevention of significant deterioration of air quality and visibility protection. With respect to the visibility component of section 110(a)(2)(J) of the CAA, Kansas stated in its 2008 O<sub>3</sub> NAAQS infrastructure SIP submissions that EPA had finalized approval of the Kansas Regional Haze SIP on December 27, 2011 (76 FR 80754). In that rulemaking, EPA determined that Kansas' Regional Haze Plan met the CAA requirements for preventing future and remedying existing

impairment of visibility caused by air pollutants. However, EPA did not act on the visibility protection portion of section 110(a)(2)(J) of the CAA in its final rule that approved portions of Kansas' 2008 O<sub>3</sub> NAAQS infrastructure SIP submissions.

EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. However, when EPA establishes or revises a NAAQS, these visibility and regional haze requirements under part C do not change. EPA believes that there are no new visibility protection requirements under part C as a result of a revised NAAQS. Therefore, there are no newly applicable visibility protection obligations pursuant to element J after the promulgation of a new or revised NAAQS. EPA is therefore approving Kansas' SIP as it satisfies the applicable visibility requirements of Element J with respect to the 2008 O<sub>3</sub> NAAQS as there are no new applicable visibility requirements triggered by the 2008 O<sub>3</sub> NAAQS.

### **III. Final Action**

EPA is taking direct final action to approve the visibility protection portion of section 110(a)(2)(J) of the CAA with regard to the March 19, 2013, and May 9, 2013, infrastructure SIP submissions from the state of Kansas.

Based upon review of the state's infrastructure SIP submissions and relevant statutory and regulatory authorities and provisions referenced in the submission or referenced in

Kansas' SIP, EPA is approving Kansas' SIP submittals as they satisfy the applicable visibility requirements of section 110(a)(2)(J) of the CAA with respect to the 2008 O<sub>3</sub> NAAQS as there are no new applicable visibility requirements triggered by the 2008 O<sub>3</sub> NAAQS.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

#### **IV. Statutory and Executive Order Review**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR



52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness

Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,

Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 12, 2015.

Mark Hague,  
Acting Regional Administrator,  
Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

**PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

**Subpart R-Kansas**

2. In §52.870, the table in paragraph (e) is amended by adding the entry “(41) Section 110(a)(2) Infrastructure Requirements for the 2008 O<sub>3</sub> NAAQS” in numerical order at the end of the table to read as follows:

**§52.870 Identification of plan.**

\* \* \* \* \*

(e) \*\*\*

EPA-APPROVED KANSAS NONREGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic area or nonattainment area	State submittal date	EPA approval date	Explanation
* * * * *				
(41) Section 110(a)(2) Infrastructure Requirements for the 2008 O <sub>3</sub> NAAQS	Statewide	3/19/2013	[Insert the date of publication in Federal Register] [Insert Federal Register citation]	This action addresses the visibility protection portion of section 110(a)(2)(J) of the CAA.